

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6038**

**PETITION OF GERALD GRIFFIN, ET AL**

(Hearing held January 26, 2005, Worksession held February 9, 2005)

**OPINION OF THE BOARD**

(Effective date of Opinion, March 24, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(1)(2)(A) and 59-C-1.323(b)(1). The existing accessory structure (detached garage) located in the front yard requires a variance of 46.20 feet as it is within 18.80 feet of the front lot line (Old Columbia Pike) and a variance of nine (9) feet as it is within three (3) feet of the side lot line (Maplehill Road). The required front lot line setback is sixty-five (65) feet and the required side lot line setback is twelve (12) feet.

Stanley Abrams, Esquire, Brooke Davies, Esquire, and M. Lee Sutherland, a land planner, represented the petitioner at the public hearing.

The subject property is Parcel P455, White Marsh Subdivision, located at 14408 Old Columbia Pike, Burtonsville, Maryland, 20866, in the R-200 Zone (Tax Account No. 00269943).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The existing 23.2 x 24.1 foot accessory structure/detached garage requires front and side lot line variances.
2. The petitioner testified that he and his son own and occupy Parcels P455 and N518 and that the family has owned the properties since the 1880s. The petitioner testified that Old Columbia Pike is located at the lot's eastern boundary, Maplehill Road located at its northern boundary, a creek runs along the western boundary, and property is a little over two acres in size. See, Exhibit No. 12 [zoning vicinity map].

3. The petitioner testified that the originally detached garage was used for selling produce that the farm grew and it was later used to house cars and farm equipment. The petitioner testified that the original garage was built in the 1930s and that it has been at the same location since that time. The petitioner testified that during a snow storm on February 18, 2003, the roof of the garage caved-in and fractured the walls of the building. See, Exhibit Nos. 18(a) through 18(d) [photographs of original garage].
4. The petitioner testified that he contacted the Department of Permitting Services [DPS] to determine if a building permit was required to repair or rebuild the garage and that that he was advised that if the garage maintained its original footprint, a permit would not be required. The petitioner testified that based upon the information received from DPS, the old building was taken down and a new garage was built. The rebuilt garage later received a notice of violation for the new construction. The petitioner testified that the rebuilt garage is the same size and height, is built on the same footprint as the prior garage and it is same distance from both Old Columbia Pike and Maplehill Road. The petitioner testified that Maplehill Road is a paved, 10 foot wide, private road and the road has no curbs or gutters. The petitioner testified that Maplehill Road goes over a part of his property. See, Exhibit No. 15 [rendered site plan].
5. Mr. Sutherland testified that the topography of the petitioner's lot drops twenty-five feet from the corner of Old Columbia Pike and Maplehill Road to the southwest corner of the stream. Mr. Sutherland testified that property has some very large specimen trees, primarily located around the house. Mr. Sutherland testified that the stream that runs along the western boundary is a tributary to Upper Paint Branch, which is in a special protection area. Mr. Sutherland testified that the tributary requires a stream valley buffer and that the standard stream valley buffer is 125 feet. The special protection buffer on the petitioner's property is 150 feet because it serves a trout stream. See, Exhibit No. 22 [water resource map].
6. Mr. Sutherland testified that the property is 200 feet deep and that when the stream valley buffer is overlaid, the result is a 50 foot buildable strip along Old Columbia Pike. Mr. Sutherland testified that the property is not platted and that the property would have to go through the subdivision process to obtain a building permit. Mr. Sutherland testified that if the property were to go through the subdivision process, a right-of-way dedication along Old Columbia Pike would also apply to the property as required by the Master Plan. Mr. Sutherland testified that the application of the required front lot line setback to the subject property would place the garage in the stream

valley buffer. Mr. Sutherland testified that the location of the structure does not impair the sight distance at the intersection of the two roads because a driver coming out of Maplehill Road must pull beyond the garage to see the road.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The original detached garage was built in the 1930s. The garage was damaged during a snow storm, which resulted in the roof caving in and fracturing the walls of the garage. The petitioner's property is located in a special protection area and has a stream that runs along its western boundary. The stream buffer required for the petitioner's property is 150 feet because the stream is a trout stream. If the garage were to be built in conformance with required setbacks, the garage would be located in the stream valley buffer. The garage was re-built on the same footprint as the original garage and it is the same width and the same distance from the roads as the original garage. Additionally, if any building permit is applied for on this property, the property will be required to go through subdivision. Additional right-of-way will be dedicated as the result of the subdivision process. Dedication of additional right-of-way, in conjunction with the impact of the stream valley buffer effectively leaves no buildable area on the property.

The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the regulations would result in practical difficulties to, and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing accessory structure/detached garage are the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the rebuilt detached garage will not materially change the view from the surrounding properties and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 46.20 feet from the required sixty-five (65) foot front lot line setback and of nine (9) feet from the required twelve (12) foot side lot line setback for the existing accessory structure/detached garage are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b), 8(a) and 15.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 24th day of March, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.